# THE GEORGIA QUESTION.

THE

# "Provisional" Idea Riddled.

GOVERNOR BULLOCK'S POSITION ANSWERED
BY COL. GEORGE N. LESTER.
OF GEORGIA.

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# "PROVISIONAL" IDEA RIDDLED.

## A Powerful Argument against Governor Bullock's Message.

MR. EDITOR: I had the honor of being one of the counsel recently engaged in defending certain members of the General Assembly of this State against the charge that they were ineligible to seats in said Assembly under the reconstruction acts of Congress, and as it is my pluck never to abandon a client's cause until all honorable and legitimate means of serving him are exhausted, I desire, in behalf of those who have been expelled from their seats by Brevet Major General Terry, to present my humble views as to the political *status* of Georgia, and the powers rightfully belonging to the military commander of this District. I shall do this in good temper, without bitterness, without passion, and with a becoming respect and toleration for the feelings and opinions of others. I shall avoid all vituperation, and endeavor to attribute bad motives to none who may chance to differ with me upon the questions involved. I shall discuss the subject, as a question of right, and justice, and law, in which the expelled members and the people of Georgia have a deep and vital interest. The discussion may result in no practical good. It may not undo the wrongs and usurpations of the past, or arrest their perpetration in the future. It will, at least, aid in making up a truthful history of the times, and serve to show that we are not oblivious or insensible to the wrongs that are piled upon our heads with such unsparing cruelty. An oppressed people can find some relief in exercising the poor privilege of remonstrance and protest against injustice and wrong—a privilege which every noble mind will freely accord.

I respectfully deny that the present government of Georgia is a "provisional" government, or that General Terry has any lawful power, or rightful authority, to hinder or interrupt any member of the General Assembly from participating in the proceedings of the same, after such member has taken the oath required by the constitution of the State, and has, in addition thereto, taken, subscribed, and filed in the office of the Secretary of State one of the oaths prescribed in the Act of Congress, approved December 22, 1869, entitled, "An act to promote the reconstruction of the State of Georgia."

General Terry has actually expelled Senators and Representatives from their places in the General Assembly, after they have been duly elected, qualified, and served for nearly two years, and the only pretence for a lawful exercise of such startling authority is found in the assertion that the present government of Georgia is "provisional" only, and that all the reconstruction acts of Congress are still unexecuted and in full force in the State. If this assertion were true, General Terry might claim the powers which he has exercised with some little show of lawful right. But such is not the status of Georgia. Her present government is not "provisional." The reconstruction acts, so far as they specify and define the powers of a district commander, are not of force. These laws have been fully administered and executed. They have accomplished the end for which they were enacted, and have, therefore, lost their operative force. A brief examination of the question will demonstrate the soundness of this position.

It is true, that by the 6th section of the act of March 2, 1867, it was declared, "that until the people of said rebel States shall be, by law, admitted to representation in the Congress of the United States, any civil governments that may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States, at any time to abolish, modify, control, or supersede the same." It is also true, that the act of July 19, 1867,

declared that it was the true intent and meaning of the act of March 2, 1867, and the act supplementary thereto, that the governments then existing in said rebel States were not legal governments, and that thereafter, said governments, if continued, were to be continued "subject in all respects to the military commanders of the respective districts, and to the paramount authority of Congress."

The 2d section of this act vested in the district commanders the power to "suspend or remove from office, or from the performance of official duties, and the exercise of official powers, any officer or person holding or exercising, or professing to hold or exercise, any civil or military office or duty in such district, under any power, election, appointment or authority derived from, or granted by, or claimed under any so-called State, or the government thereof," &c., "whenever, in the opinion of such commander, the proper administration of said act should require it."

The 4th section of the same act made it the commander's duty "to remove from office all persons who were disloyal to the Government of the United States, or who used their official influence in any manner to hinder, delay, prevent, or obstruct the due and proper administration of said act, and the acts to which it was supplementary."

These are the vast powers which the reconstruction acts vested in a district commander upon the subject of removals from office, and he had corresponding power to fill vacancies by detailing soldiers for the purpose, or by appointing other persons.

Does General Terry, or the Commander-in-Chief of the army, or the Secretary of War, or the President of the United States, or any other officer or person throughout this broad land, pretend that these vast powers now appertain to the military commander of the District of Georgia? Will any man, of any party, seriously insist that General Terry has the lawful right to remove any and every officer in this State, and detail a military officer or soldier to take his place and perform the functions of the office? Can the mil-

itary commander, by virtue of any known law, remove the Governor, the justices of the Supreme Court, the judges of the Superior Court, the attorney and solicitors general, the members of the General Assembly, the ordinaries, the clerks, the sheriffs, &c., if he should deem them "disloyal to the Government of the United States?"

If the romantic opinion should be conceived by General Terry, that the "proper administration" of the reconstruction acts required their removal from office, could he, by the exercise of a lawful power, displace the judges of Georgia, and beautify and adorn the judiciary of the State by detailing some soldier or appointing some stranger to administer the law? If he should be impressed with the conviction that the present members of the General Assembly were "using their official influence to hinder, delay, prevent or obstruct the due execution of the reconstruction laws," could he disperse the Legislature, and march a battalion of United States soldiers into the Capitol, who, at his command, would ratify the constitutional amendment, declare the assent of the State to the fundamental conditions of restoration, and make laws to suit him and his party? Can a military commander play all these fantastic tricks in Georgia? It is no answer to my questions to say that General Terry will not do so, and that he has too much good sense and sound judgment to enact such ridiculous performances. It is not a question as to what he will do in the exercise of his good sense and sound judgment, but it is a question of power. Has he these powers according to law?

If the government of Georgia is "provisional only," and if the reconstruction laws are still in force, and General Terry may "exercise within this State the powers of a commander of a military district, as provided by the act of March 2, 1867, and the acts supplementary thereto," he can do all that I have said, and much more that I have not enumerated. Before the State was reconstructed, and before the reconstruction laws were executed, the powers before alluded to did belong to the district commander, and were freely

exercised, even to the extent of removing the Governor, the State treasurer, the comptroller general, the secretary of State, judges of the Superior Court, and many other officers of the Commonwealth. Do these powers appertain to the commander now? If they do, let it be known by what order they were given. Let the grave question, in all its magnitude and force, be looked full in the face.

General Terry has assumed to determine that certain senators and representatives of the Georgia Legislature are ineligible to the seats they occupied, and he has expelled them from their places. More than this; he has followed up that proceeding with an official approval of and recommendation that others be seated in the places of the expelled members, without any sort of inquiry into the eligibility of the substitutes, so far as the public are informed. One of these substitutes is the postmaster of Atlanta, Georgia, and occupies a place in the Senate, and performs the functions and duties of a senator, in direct violation of that provision of the constitution of Georgia which declares that "no person holding a military commission, or other appointment or office, having any emolument or compensation annexed thereto, under this State or the United States, or either of them, except justices of the peace and officers of the militia," &c., "shall have a seat in either house." Another one of these substitutes, who occupies the place of an expelled member of the House, is the clerk of the said postmaster at Atlanta.

Let it be remembered in this connection, that Congress has approved the constitution of Georgia.

Now, if General Terry can lawfully do this, then, indeed, the government of this State is exceedingly provisional, and the people have gone through an immense farce in the matter of registering voters, electing delegates, holding conventions, framing and ratifying a constitution, electing officers, and inaugurating a State government.

I repeat, with emphasis, that the present government of Georgia is not provisional, and the fact that General Terry,

and Governor Bullock, and President Conley, and Speaker McWhorter, call it so, does not change the fact. Nay, more: if every officer in the State should, as a matter of fancy or otherwise, prefix the word provisional to his official designation, it would not change the nature or character of the government. In former times, governments were invested with something like sacredness, and could not be made or unmade, altered, or modified by a process so cheap, or an arrangement so convenient.

I put the case of my clients and the interests of our people upon the law, which cannot be rightfully repealed or changed by prefixes or military orders. The reconstruction acts placed Georgia under the absolute control of a military government, and required certain things to be done before swords and bayonets should cease to flash and glisten in the faces of her people; and bitter as was the cup to many of her citizens, she drank its contents of wormwood and gall, until even the dregs were all taken.

The law declared that the government should be provisional only, and subject to the authority of the military commander and Congress, "until the people should be, *by law*, admitted to representation in the Congress of the United States."

The good old State, with burning feet, walked through the fiery ordeal, and Congress took her by the hand and said, thus far it is enough, and you shall be delivered; and on the 25th of June, 1868, an act was passed entitled "An act to admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida, to representation in Congress."

The preamble to this act declared that Georgia had, *in pursuance of the provisions* of the reconstruction acts, framed a constitution of State government that was Republican, and the first section of the act solemnly declared that when her Legislature should duly ratify article 14th of the Constitution of the United States, and declare the assent of the State to certain fundamental conditions specified in the act, the State should be admitted to representation.

Poor, friendless, humiliated Georgia again pressed the cup of augmented bitterness to her lips, and on the 21st of July, 1868, complied with the very letter, with every requirement of the act, upon the doing of which the first section of the act *took effect*, and she was, *by law*, admitted to representation in Congress as a State in the Union. The act declared, in express terms, that the first section should *take effect* as to Georgia when she ratified article 14, and assented to the conditions imposed.

From and after that time the prefix "*provisional*" was dropped by Congress and by every officer of the State, and of the United States, and was never resumed until it became necessary to subserve other ends besides reconstruction.

The *law* by which Georgia was *admitted* stands this day upon the statute-book, unrepealed and unaltered. Though her Senators and Representatives have no place in the halls of Congress, yet they are, by solemn, unrepealed *law*, most unquestionably entitled to their seats. Though the State has neither voice nor vote in the national Legislature, she has nevertheless been, *by law*, admitted to representation in Congress as a State in the Union. Though the Secretary of the Senate and the Clerk of the House will not place the names of her duly elected Senators and Representatives upon the roll of members, yet such refusal does not repeal or change the law. The persistent refusal of Congress to allow the Senators and Representatives from Georgia to be sworn, and to take their places as members, does not in any manner abrogate the law by which she was admitted to representation. The stolid indifference with which Congress has, up to this time, disregarded its solemn pledge of admission and failed to mete out to us the benefits of the law, does not wipe out one line or letter of its provisions from the statute-book. There it stands, with its unmistakable words and its solemn sanctions, declaring that Georgia shall be admitted to representation in Congress as a State in the Union.

The legal proposition that this State has been by law admitted to representation in Congress is abundantly and un-

answerably shown by the fact that no additional legislation is necessary to effect that object. Senators and Representatives from Georgia could now be qualified and take their seats with no more ceremony than would be required in the case of Senators and Representatives from Massachusetts, Ohio, or any other State of the Union. To simply administer the oath of office is all that is necessary in either case, the law admitting Georgia having been enacted and complied with long ago.

Thus, I think, it is conclusively shown, that from and after the 21st of July, 1868, the government of Georgia ceased to be provisional, and assumed the form of a permanent government; that the reconstruction acts were fully administered and executed, and that the powers of the military commander, under said acts, ceased to exist in the State.

I come now to a very brief discussion of the objects and purposes of the act of the 22d of December, 1869, entitled "An act to promote the reconstruction of the State of Georgia," and the circumstances that led to its passage. By this act, Congress intended to correct the wrong done to the colored members of the General Assembly, by their expulsion from the seats to which they were elected, and if such expulsion had not occurred, our Senators and Representatives long ago would have been in their places.

This act does not revive the reconstruction laws, nor revoke the registration of voters, nor withdraw the approval of the constitution of the State by Congress. It does not, in express terms, or by reasonable implication, set aside anything that Georgia had done, except the act expelling the colored members from the Legislature, and seating others in their stead. The act nowhere declares or hints at a revival of military authority in the State, but, as I shall presently show, the provisions of the bill clearly indicate the contrary.

My humble view of this act saves Congress from the imputation of riding over the Constitution of the United States, and of disregarding the vested rights of persons elected to the Legislature in accordance with law. The first section of

the 14th article of the Constitution provides that no State shall "deny to any person within its jurisdiction the equal protection of its laws," and, in the judgment of Congress, this provision of the Constitution was violated by the expulsion of the colored members from the places to which they had been elected, and to which they were ineligible, in the General Assembly of the State.

The 5th section of article 14 declares that Congress shall have power to enforce, by appropriate legislation, the provisions of said article, and in the exercise of this power they deemed it appropriate legislation to pass the act of December 22, 1869, in order to restore the colored men to their seats and thus *secure* to them the equal protection of the laws of the State, which the Legislature had *denied* them when they were expelled. Hence the act required the Governor (not the "Provisional" Governor) to summon the persons elected to the General Assembly, as appears by the proclamation of General Meade to appear at Atlanta on a day stated, and those persons, and those alone, were to constitute the General Assembly, if they could take the oaths prescribed in the act. If they swore falsely the act provided the remedy, and designated the forum in which the remedy was to be obtained. The idea that all the offices in the State were to be vacated, and new elections had, is not so much as hinted at in the act. No one thought of Gen. Terry passing upon the eligibility of members, and filling the places of those expelled by him with others not summoned or designated in the act.

So far from creating a military district in Georgia, and placing a commander over it, with the powers specified in the act of March 2, 1867, and its supplements, the 7th section of the act which I am discussing provides, that upon the application of the Governor of Georgia—not Provisional Governor—the President of the United States shall employ such military or naval forces of the United States as may be necessary to enforce and execute the provisions of that act—not the reconstruction acts that had already been enforced and executed, and become inoperative.

This is all that the military authorities were to have to do with the act, and yet the "Provisional" Governor and General Terry have taken charge of the Legislature, and *ordered* when it should meet, when it should take recess, who should be expelled, and who should fill their places. And when, by these means, a majority is obtained that can be absolutely controlled, they are told to call themselves a provisional legislature, and to declare that it is the only legal one that has existed in the State since the war ended, and to make haste and ratify the 14th amendment, declare again the assent of Georgia to the fundamental conditions of the act of June 25, 1868, ratify the 15th amendment, and then take a recess of twelve days, so as to give time for the manipulators of this illegally organized assembly to hie to Washington and beset Congress to approve and ratify what they have done, to the utter ruin of a State which, if maltreated and harassed much longer, will not be worth admission into any Union.

In behalf of my wronged clients, and in behalf of this State, every inch of whose soil I love, and in behalf of her people, whose welfare and happiness I desire above every earthly good, I appeal to Congress, and to the President, to give us a speedy deliverance from the troubles that have so long shut the door of prosperity against us.

GEORGE N. LESTER.